

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRA/196/2004

M/s. Goyal Iron & Steel Corporation ... Applicant
vs.

M/s. Man Alloys Steels Private Ltd. ... Respondent

Mr. S.S. Patwardhan for applicant.

A. M. Kulkarni for respondent

CORAM: D. G. KARNIK J.

DATE: 19th October 2006

P.C.:

1. This civil revision application is directed against the order dated 19th October 2004 passed by the Joint Civil Judge, Senior Division, Sangli, dismissing the petitioner ' application under Order 7 Rule 11 of the Civil Procedure Code.
2. There were business dealings between the petitioner and the respondent. Some cheques were issued by the respondent to the petitioner in respect of the said business dealings. However, according to the respondent, after issuance of the said cheques the accounts between the parties were settled and no amount was payable by the respondent to the petitioner. The respondent therefore filed a suit, bearing

Special Civil suit No. 66 of 2003, for a declaration that the respondent did not owe any money to the petitioner and that the cheques issued by the respondent in favour of the petitioner were no longer valid and payable. The petitioner resisted the suit and also filed an application under Order 7 rule 11 of the Civil Procedure Code praying for rejection of the plaint on the following grounds viz.

- i) The suit was barred by Sections 41 and 42 of the Specific Relief Act;
 - ii) The court of Civil Judge, Senior Division had no territorial jurisdiction to entertain and try the the suit, and only the court at Nagpur had the jurisdiction to try the suit;
 - iii) The suit was not properly valued and proper court fee was not paid; and
 - iv) The plaint did not disclose any cause of action.
3. The respondent amended the plaint, corrected the valuation and paid proper court fees stamp and therefore the objection regarding the suit being not properly valued and proper court fee having not been paid does not survive. Learned counsel for the petitioner does not press the ground that the plaint does not disclose any cause of action. It would therefore be necessary to examine only the first two grounds mentioned above.
4. Section 41 of the Specific Relief Act describes the situations in which an injunction cannot be granted by a Civil Court.

Clauses (a) to (j) describe the situations wherein the injunction was required to be refused. Learned counsel for the petitioner was unable to point out any of the causes of section 41 under which the injunction as was prayed in the suit was required to be refused. Section 42 of the Specific Relief Act lays down that where a contract contains a positive agreement coupled with a negative agreement and the circumstances exist under which the court is unable to compel specific performance of an affirmative agreement it would not preclude the court from granting an injunction to perform the negative agreement. I fail to see how section 42 has any relevance and how the suit is barred by section 42 of the Specific Relief Act. In my view the provisions of sections 41 and 42 of the Specific Relief Act have no relevance.

5. As regards the territorial jurisdiction, Order 7 Rule 10 of the Civil Procedure Code says that subject to the provisions of Rule 10-A the court shall at any stage of the proceedings return the plaint for presentation to the proper court in which the suit should have been instituted. In other words if the suit is instituted in the court which does not have the territorial jurisdiction to try the suit, the plaint would have to be returned under Order 7 Rule 10 and the court shall order the plaint be returned to the plaintiff for presentation to the proper court. Lack of territorial jurisdiction, therefore, does not result in rejection of the plaint but may result in

returning of the plaint. The petitioner had not prayed for return of the plaint but had claimed for rejection of the plaint. The prayer was improper and could not be granted. It is clarified that I express no opinion about the territorial jurisdiction of the court and if the issue of jurisdiction is raised in an appropriate manner the court shall consider it on its own merits. With these observations the revision petition is dismissed.

(D.G. KARNIK J.)